

Date Issued: April 30, 1982 (AGO 82-34)

Requested by: Carol S. Nelson,  
Oriska City Attorney

- QUESTION PRESENTED -

Whether a person who owns real estate in a city against which there are unpaid, delinquent real estate taxes is eligible to hold a city office.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that an individual who owns real estate in a city against which there are unpaid, delinquent real estate taxes is not ineligible to hold a city office.

- ANALYSIS -

Section 40-13-01 of the North Dakota Century Code, provides as follows:

40-13-01. QUALIFICATIONS OF ELECTIVE AND APPOINTIVE OFFICERS. No person shall be eligible to hold an elective municipal office unless he is a qualified elector of the municipality and unless he has been a resident thereof for at least nine months preceding the election. No person shall be eligible to hold an appointive office unless he is a citizen of the United States. No person in default to the municipality shall be eligible to any office.

The question presented here is concerned with the last sentence of the above-quoted section. That sentence has its source in the last clause of 1887 Laws of Dakota, Chapter 73, Article 5, Section 7, which section reads as follows:

No person shall be eligible to any office, who is not a qualified elector of the city, and who shall not have resided therein at least nine months next preceding his election or appointment, nor shall any person be eligible to any office who is a defaulter to the corporation.

The last clause, relating to "defaulter to the corporation", remained unchanged in the law until it was revised and included as the last sentence of section 40-1301 of the North Dakota Revised Code of 1943, now codified as section 40-13-01, N.D.C.C. The revisor's note to this section in the 1943 Code includes the following statement: "Revised for clarity without change in meaning."

There is a general presumption that codifiers of statutes do not intend to change the law as it formerly existed, and this is particularly applicable when the code revisor's notes state that no change in meaning was intended even though the language of the statute was revised when codified. See section 1-02-25, N.D.C.C.; Schmutzler v. North Dakota Workmen's Compensation Bureau, 49 N.W.2d. 649 (N.D. 1951); and Kershaw v. Burleigh County, 47 N.W.2d. 932 (N.D. 1951). Consideration, therefore, should be given not only

to the meaning intended by the Legislature for the word "default" in section 40-13-01, N.D.C.C., but also for the word "defaulter" in the statute that was codified as section 40-13-01, N.D.C.C.

The terms "default" and "defaulter" as used in section 40-13-01, N.D.C.C., and its predecessor statute, have been interpreted by other courts as implying more than a "mere civil liability" to the city or other public corporation. In Zirkle v. Stegall, 43 S.W.2d. 192, 194 (Tenn. 1931), the court said that a statute disqualifying those "who are defaulters to the treasury at the time of election" did not render ineligible to hold public office a person who was merely civilly liable to the public treasury, "there being no defalcation, embezzlement, or like offense, that would render one ineligible to hold public office." To the same effect, see State ex rel. Broatch v. Moores, 73 N.W. 299 (Neb. 1897); and State v. Kountz, 12 Mo. App. 511, 513 (Mo. App. 1882) referenced in 11A Words and Phrases Defaulter 277 (1971). See also 26a C.J.S. Default.

No case has been found which holds that "default" as used in a statute similar to section 40-13-01, N.D.C.C., includes a mere civil liability to the public treasury. Even if civil liability were sufficient to make a person ineligible to hold city office, it must be recognized that collection of delinquent real estate taxes can be enforced only against the real estate itself and not as a personal obligation of the owner. See section 57-02-04(1), N.D.C.C., and Hertzter v. Freeman, 96 N.W. 294 (N.D. 1903).

For these reasons a person who owns real estate in a city against which there are unpaid, delinquent real estate taxes is not thereby rendered ineligible to hold a public office in that city.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

ROBERT O. WEFALD  
Attorney General

Prepared by: Kenneth M. Jakes  
Assistant Attorney General